

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

<b>IN THE MATTER OF THE APPLICATION )</b>	
<b>OF SUEZ WATER DELAWARE INC. )</b>	
<b>CONCERNING THE SEMI ANNUAL )</b>	
<b>ADJUSTMENT TO THE DISTRIBUTION )</b>	<b>PSC DOCKET NO. 18-0899</b>
<b>SYSTEM IMPROVEMENT CHARGE ("DSIC"))</b>	
<b>EFFECTIVE JULY 1, 2018 PURSUANT TO )</b>	
<b>26 DEL. C. §314(b)(5) (Filed June 5, 2018) )</b>	

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**THE PUBLIC SERVICE COMMISSION STAFF'S OPPOSITION TO SUEZ WATER  
DELAWARE, INC.'S MOTION FOR RECONSIDERATION**

The Public Service Commission Staff ("Staff") hereby opposes the Motion of Suez Water Delaware, Inc. ("Suez") for Reconsideration of the Staff's rejection of Suez's untimely-filed application to amend its semi-annual Distribution System Improvement Charge ("DSIC"), and states as follows:

**BACKGROUND**

1. In 2001, the Delaware General Assembly enacted 26 Del. C. §314, which authorized public water utilities regulated by the Delaware Public Service Commission ("Commission") to file rate schedules on a semi-annual basis establishing a DSIC rate to allow an automatic adjustment of that utility's basic rates and charges. Specifically, 26 Del. C. §314(b) states that "Notwithstanding any other provision of this subchapter, a public utility providing water service may file with the Commission rate schedules establishing a DSIC rate that will allow for the automatic adjustment of the public water utility's basic rates and charges to provide recovery of DSIC costs on a semi-annual basis". Based

on this legislation, the Commission adopted regulations, 26 Del. Admin. C. § 1009, "Regulations Implementing the Water Utility Distribution System Improvement Charge ("DSIC")".

2. 26 Del. C. §314(b) states the following:

(3) The effective date of changes in the DSIC rate *shall* be January 1 and July 1 every year.

(4) The public water utility *shall* file any request for a change in the DSIC rate and supporting data with the Commission *at least 30 days prior* to its effective date.

(5) The DSIC rate shall be adjusted semiannually for eligible distribution system improvements placed in service during the 6-month period ending 2 months prior to the effective date of changes in the DSIC rate.

3. Clearly, both the DSIC statute and the Commission's regulations implementing it require a water utility that seeks to implement a new or changed DSIC rate to file its application with the Commission at least 30 days prior to either a January 1 or a July 1 effective date.

4. Suez and its predecessor companies have filed DSIC applications since the DSIC statute was enacted in 2001. See, e.g., Docket Nos. 12-540, filed on November 30, 2012 (United Water);<sup>1</sup> 13-216, filed on May 29, 2013 (United Water); 13-472, filed on November 26, 2013 (United Water); 14-192, filed on May 29, 2014 (United Water); 14-0537, filed on November 25, 2014

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<sup>1</sup> United Water was Suez' predecessor company.

(United Water); 17-0370, filed on May 25, 2017 (Suez); 17-1158, filed on November 27, 2017 (Suez). It did not file DSIC applications in 2016 because it had filed a rate case.

5. If Suez were going to request a change in its DSIC rate to become effective on July 1, 2018, it was required to file its application on or before May 31, 2018.

6. On June 5, 2018, Suez filed an application to increase its DSIC rate from 2.33% to 3.41% effective July 1, 2018. (Exhibit A to Suez Motion for Reconsideration).

7. By letter dated June 12, 2018, the Commission Secretary notified Suez that its application had been rejected for its failure to file at least 30 days prior to the July 1, 2018 effective date, in violation of 26 *Del. C.* §314(b)(4) and 26 *Del. Admin. C.* §1009.2.1.

#### **SUEZ'S MOTION FOR RECONSIDERATION**

8. Suez acknowledges that it filed its application late. It claims, however, that its failure to file its application timely was "a result of recent staffing changes." Although it purports to recognize the need for the 30-day period between filing the application and a new DSIC rate becoming effective, it nevertheless requests the Commission to grant it "a limited, one-time exception" to the statutory and administrative requirements that the application be filed at least 30 days prior to the effective date; allow it to implement the new DSIC rate effective September 1,

2018; and create a truncated DSIC period from September 1, 2018 through January 1, 2019, or if the Commission does not approve the request, then the Company is requesting that the eligible investments made from November 1, 2017 through April 30, 2018 be included in its January 1, 2019 DSIC filing . It asserts that its proposal will neither prejudice any party's rights nor prejudice its customers, but it will be harmed by not being permitted to "timely recover its allowable return on the eligible investments "it made from November 1, 2017 through April 30, 2018.

#### **ARGUMENT**

##### **A. Suez's Request Should Be Denied.**

9. The Commission is bound by statutory provisions, and is required to interpret those statutes in a manner that effects the General Assembly's intent. And the General Assembly's intent could not be clearer. The applicable semi-annual recovery periods are those that begin on January 1 and July 1, and none other. And a utility seeking a timely return on eligible investments is required to file its application for recovery at least 30 days before the applicable effective date, which is either January 1 or July 1. Nothing in the statute or the Commission's regulations authorizes the Commission to ignore the law. The Commission rules may be waived, the law cannot. Therefore, Staff recommends that the Commission deny this request.

10 Suez is also requesting to implement its as-filed DSIC rate on September 1, 2018, with the same eligible investment period of November 1, 2017 through April 30, 2018. 26 Del. C. § 314(b)(5) states that the eligible investments placed in service are for the 6 month period ending 2 months prior to the effective date of changes in the DSIC rate. Since the effective date was required to be July 1, 2018 with those specific eligible investments, the law does not provide any provision for modifying the implementation date or investment period. Therefore, Staff recommends the Commission deny this request.

11. Suez is also requesting that if the Commission denies Motion, then it would request that the Commission permit the Company to include in its January 1, 2019 DSIC rate calculation the eligible investments placed in service during the period of November 1, 2017 through April 30, 2018 be included with the eligible investments placed in service in the period of May 1, 2018 through October 31, 2018. Again, Section 314 (b) of the Delaware Code does not allow for this. Therefore, Staff recommends the Commission deny this request.

## **CONCLUSION**

12. 26 Del. C. §§314(b)(3), (b)(4) and (b)(5) are clear. The applicable semi-annual DSIC recovery periods are those that begin on January 1 and July 1, and none other. And a utility seeking a

timely return on DSIC-eligible investments is required to file its application for recovery at least 30 days before the applicable effective date, which is either January 1 or July 1. The Commission cannot waive those mandatory statutory provisions.

13. Therefore, Staff recommends that the Commission deny Suez's motion and deny the request in Suez's letter dated June 15, 2018 requesting eligible investments placed in service from November 1, 2017 through October 31, 2018 in its January 1, 2019 DSIC filing.

Connie S. McDowell  
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Delaware Public Service Commission Staff

July 3, 2019